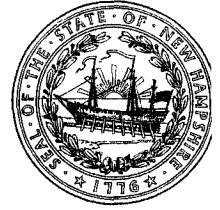




The State of New Hampshire
Department of Environmental Services
Waste Management Council

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STATE OF NEW HAMPSHIRE
WASTE MANAGEMENT COUNCIL

Docket No. 05-09 WMC

Combined Appeal of:
Regenesis Corporation ("Regenesis")
Residents Environmental Action Committee for Health ("REACH")
Citizens for a Future New Hampshire ("CFNH")

In Re: License Action No. NPLA 04-010
Solid Waste Permit No. DES-SW-SP-002

Decision & Order on Notice of Appeal

Background

On November 22, 2004, the Department of Environmental Services, Waste Management Division ("DES") issued Notice of Proposed License Action NO. NPLA 04-010 ("NPLA") announcing its intent to revoke Solid Waste Permit No. DES-SW-SP-002 (the "Permit").

On March 4, 2005 DES filed an Amended Notice of Proposed License Action ("ANPLA") to revoke the Permit held by Regenesis Corporation ("Regenesis"), a successor-in-interest to the original permittee, Bio Energy Corporation. The permit was issued under the provisions of RSA 149-M and NH CODE ADMIN. RULES Env-Wm100-300 and 2100 (the "Solid Waste Rules"). The permit authorizes the storage and use of wood fuel derived from construction and demolition debris, a solid waste, at an electric generating facility in Hopkinton, New Hampshire.

State solid waste laws and rules restrict the granting of a permit to a business entity if any of its officers, directors, partners, key employees or principal equity holders have been convicted of a felony within 5 years of the application date. DES is also authorized to deny or revoke a permit if an applicant or permittee fails to demonstrate sufficient "reliability, expertise, integrity, and competence to operate a solid waste facility."

The ANPLA alleged that William Dell'Orfano, a principal of both Bio Energy Corporation and Regenesis, made a false or misleading statement when he certified on December 2, 2002 that none of Bio Energy Corporation's officers or directors had been convicted of a felony in the 5 years prior to the application to transfer the Permit to Regenesis. Another corporate owner of Bio Energy Corporation, Anthony DiNapoli, had been convicted of a felony on March 25, 2002. The ANPLA asserted that Mr. Dell'Orfano's allegedly false or misleading certification, and other false or misleading statements and omissions made to DES during the course of the permit proceedings, demonstrated that Regenesis does not have sufficient reliability and integrity to operate a solid waste facility. The ANPLA contended that these deficiencies could not be corrected and proposed that the Permit be revoked. If the permit was not revoked, the ANPLA alternatively sought that Regenesis show cause why the 2003 permit modification proceeding should not be re-opened to address alleged inadequacies in the notices provided to abutting property owners.

Regenesix objected to the proposed permit revocation and denied that it had wrongfully withheld information about the conviction or that it had in any way violated or failed to comply with the solid waste statutes and rules. In particular, Regenesix asserted that Mr. Dell'Orfano's certification that no corporate principals had been convicted of a felony was true because Mr. DiNapoli sold his interest in Bio Energy Corporation before the December 2002 transfer application that contained the certification.

In addition to DES and Regenesix, the Town of Hopkinton and two citizens' groups, Residents Environmental Action Committee for Health ("REACH") and Citizens for a Future New Hampshire ("CFNH"), participated as interveners in this matter. The interveners sought a broad inquiry into the conduct of Bio Energy Corporation, Bio Energy LLC and Regenesix with respect to the Facility. In a Decision on Pending Motions dated February 17, 2005, the scope of this proceeding was limited to matters "relevant and material to the facts summarized in Section III of the NPLA [later to become the ANPLA], and to the violations and proposed actions described in Sections IV and V."

A 3-day adjudicative hearing was conducted on April 18 to April 20, 2005. Assistant Commissioner Michael J. Walls was assigned to be the Hearings/Presiding Officer throughout the adjudicative process. The issues addressed at the hearing and in the final decision in this matter were:

1. Whether William Dell'Orfano made a false or misleading statement when he certified in December of 2002 that none of Bio Energy's officers or directors had been convicted of a felony in the five years prior to the application for a permit transfer.
2. Whether good cause exists as provided in Env-Wm 306.05 to revoke the permit based on the failure to disclose a felony conviction of a corporate principal.
3. Whether Mr. Dell'Orfano provided misleading or incomplete information to DES by failing to disclose that Bio Energy Corporation had been dissolved in the 2002 transfer application.
4. Whether good cause exists as provided in Env-Wm 306.05, to revoke the permit based on the failure to disclose the dissolution of Bio Energy Corporation.
5. Whether the alleged failures to disclose the felony conviction or the dissolution of Bio Energy Corporation demonstrate that Regenesis Corporation lacks the reliability and integrity to operate a solid waste facility.
6. Whether good cause exists as provided in Env-Wm 306.05 to revoke the permit based on the permittee's lack of reliability and integrity.

7. Whether the required notices to abutters in the 2002 transfer proceeding and the 2003 permit modification proceeding complied with Env-Wm 303.05 (d), and, if not, whether either of these prior proceedings should be reopened.

On June 23, 2005 the Hearings Officer issued a Notice of Decision which he found that there is good cause to revoke the permit.

On July 25, 2005 Regenesis, REACH, and CFNH each filed appeals with the NH Waste Management Council (“the Council”) appealing certain rulings in the June 23, 2005 final decision. Regenesis was represented by Attorney Edward A. Haffer and Attorney Robert P. Cheney. REACH was represented by Attorney John E. Friberg and Attorney Ronald J. Lajoie. CFNH was represented by Attorney Jeffrey L. Roelofs.

On August 5, 2005 Attorney Jennifer J. Patterson filed an Appearance with the Council on behalf of DES.

On August 17, 2005 Attorney Barry Needleman filed an Appearance and a Petition to Intervene with the Council on behalf of the Town of Hopkinton (“Hopkinton”).

On September 21, 2005 Regenesis filed a Motion for Interlocutory Transfer Without Ruling to the Supreme Court.

On September 22, 2005 the Council voted to accept the Regenesis Appeal and combine the Regenesis Appeal, the REACH appeal, and the CFNH appeal for administrative purposes, and to refer to the appeal(s) as Docket No. 05-09 WMC – Regenesis Corporation Appeal. The Council recognized Regenesis and DES as principal parties to the appeal. The Council decided to convene a Motions Hearing to determine the intervener status of the Town of Hopkinton, CFNH, and REACH, and to hear argument relative to the Motion for Interlocutory Appeal Without Ruling to the Supreme Court.

On September 30, 2005 Hopkinton, CFNH, and REACH filed objections to the Motion for Interlocutory Appeal Without Ruling to the Supreme Court.

On November 4, 2005 the Council heard arguments from CFNH, REACH, and the Town of Hopkinton relative to their Standing to participate in the Appeal. After arguments the Council granted Intervener Status to CFNH, REACH, and the Town of Hopkinton. The Council also heard arguments from all parties relative to Regenesi's Motion for Interlocutory Transfer Without Ruling to the Supreme Court. After arguments the Council denied the motion.

On November 11, 2005 a Prehearing Conference was held. The parties agreed rather than offering a full evidentiary hearing with witnesses they would instead offer presentation and argument to the Council. The Appeal Hearing was scheduled to take place on January 26, 2006.

On January 26, 2006, following proper notice to all parties, the Council held an adjudicatory hearing on the subject appeal in accordance with RSA 541-A:31-38 and the Waste Management Council's procedural rules, NH CODE ADMIN. RULES Env-Wm 200. The Council listened to presentation and argument by Regenesi, DES, CFNH, REACH, and Hopkinton. The parties were be allowed adequate time for an opening statement, their presentations, rebuttal, and closing statements. Immediately following the appeal hearing, the Council decided to deliberate at a later date.

On February 23, 2006 the Council met to deliberate this appeal. At the conclusion of a lengthy deliberation session the Council voted 6-3 to DENY the appeal.

Findings and Conclusions

The Council agrees with Assistant Commissioner Mike Walls conclusions dated June 23, 2005. However, the Council finds that the certification language for "existing" permittee per RSA 149-M:9 is limited to existing officers, directors or partners not past officers, directors or partners.

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Order

The subject Appeal is **DENIED**.

Reconsideration

In accordance with New Hampshire Code of Administrative Rules Env-WMC 205.16, any party whose rights are directly and adversely affected by a decision of the Council may file with the Council a Motion for Rehearing within 20 days of the date the written decision is issued.

So Ordered for the Council:



Michael P. Sclafani, Appeals Clerk

May 30, 2006